



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 04-05

SUBJECT: OSCAR B. GOODMAN
MAYOR, CITY OF LAS VEGAS

A. JURISDICTION:

Mayor Goodman is a public officer as defined by NRS 281.005 and NRS 281.4365. As such, the Commission has jurisdiction over this complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion #04-05, including videotapes of press conferences held by Mayor Goodman -transcripts attached (see Tab B).
- Reviewed subject's response received March 16, 2004 (see Tab C).
- Interviewed Mayor Goodman, March 16, 2004, witnessed by Detective Sergeant Jackie Muth, Nevada Division of Investigation (NDI).
- Interviewed Las Vegas City Councilman Michael Mack, March 16, 2004, witnessed by Detective Sergeant Muth, NDI, and Mr. Mack's counsel Bruce Judd.
- Requested additional information from Mayor Goodman via written memorandum hand-delivered on March 16, 2004, and subsequently requested in writing on March 17 that the additional information be provided to the Executive Director no later than 5:00 p.m. on March 24, 2004 (see Tab D).
- Reviewed subject's response to additional information request of the Executive Director received March 24, 2004 (see Tab E).
- Interviewed Las Vegas City Councilwoman Lynette Boggs-McDonald via telephone on March 18, 2004.

- Reviewed financial disclosure statements filed by Oscar Goodman from 1999 through current statement filed January 15, 2004, as well as statutory Acknowledgment of receipt of the Code of Ethical Standards dated March 27, 2001 (see Tab F).
- Reviewed relevant opinions and previous interpretations of NRS 281.481(2) by the NCOE (see Tab G).
- Conducted a comprehensive search regarding corporate ownership holdings of Oscar Goodman (see Tab H).
- Conducted a search on the Meadows School and its nonprofit status (see Tab I).
- Reviewed information from newspaper articles, web sites, and City of Las Vegas information available on the Internet (referenced by appropriate tabs within this report).
- Reviewed the Las Vegas Previews/iPolitix CD.

C. RECOMMENDATIONS:

1. Based on investigative activities, the Executive Director recommends that the Panel find that just and sufficient cause **DOES EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

NRS 281.481(1) NRS 281.481(2) NRS 281.481(7)

NRS 281.481(10) NRS 281.553

SPECIFIC REASON(S):

Sufficient credible evidence exists to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether the subject of the complaint violated the above provisions of NRS Chapter 281.

2. Based on investigative activities, the Executive Director recommends that the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to render an opinion in this matter relating to the provisions of:

NRS 281.501(2) NRS 281.501(3) NRS 281.501(4)

SPECIFIC REASON(S):

No allegation or credible evidence of any fact that amounts to or supports a violation by any public officer of the above provision of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION

The request for opinion alleges violations of NRS 281.481(2), NRS 281.501(2), and NRS 281.501(3) by Las Vegas Mayor Oscar B. Goodman. The complaint alleges Mayor Goodman violated the ethics in government law by:

1. Using his position in government to grant unwarranted privileges, preferences, or exemptions for another person in violation of NRS 281.481(2). It is alleged he did this by acting as host for a cocktail party paid for by a company in which the Mayor's son (in partnership with Las Vegas City Councilman Michael Mack) is a principal; allowing his mayoral title to be used on the invitation for the party; personally disseminating invitations for the cocktail party; appearing as the featured politician on the CD distributed by said son's business; personally promoting his son's business at the cocktail party to other mayors, public officers or employees, and the Chairman of the Democratic National Committee.
2. Violating the disclosure and abstention provisions of NRS 281.501(2), and also NRS 281.501(3). [The Executive Director notes that the 2003 Nevada Legislature amended disclosure statutes such that the former provisions of NRS 281.501(3) have been renumbered as NRS 281.501(4), and the person who filed the complaint likely intended to allege a violation of the former NRS 281.501(3), the provisions of which are presently codified as NRS 281.501(4). This assumption is based on the fact that NRS 281.501(3) now pertains to the conduct of planning commissions in cities and counties with a population greater than 400,000, and Mayor Goodman is not a member of such a planning commission.]

E. SUMMARY OF SUBJECT'S RESPONSE

In the initial response received March 16, 2004, Mayor Goodman provided the following information:

- With regard to allegations relating to NRS 281.501, Mayor Goodman stipulates there are no facts contained within the Request for Opinion which appear to implicate any vote, disclosure, or abstention situation, and therefore no response to these allegations is provided.
- With regard to allegations relating to NRS 281.481(2), Mayor Goodman provides a detailed analysis of previous interpretations of this statute by the Commission. He notes the Commission has previously interpreted a violation of NRS 281.481(2) involving prohibited use of a government position as invoking one of two elements, either the

expenditure of government assets (typically funds, staff, or equipment) or the potential for jurisdictional abuse.

The additional information received from Mayor Goodman on March 24, 2004 (via facsimile) in response to the request of the Executive Director is incorporated within this report and can be found under Tab E, except for the ‘sealed envelope.’ The Federal Express package received by the Executive Director on March 25, 2004 contained the sealed envelope. The package was opened in the presence of Commission Counsel, the letter and iPolitix information was removed, and the sealed envelope was replaced in the Federal Express box and the box was sealed. Commission Counsel then took custody of the sealed box and hand-delivered it to NCOE Chairman Rick Hsu in Reno at approximately 1:00 p.m., March 25, 2004. The envelope will remain in the custody of Chairman Hsu until such time as the panel renders a decision in this matter and Chairman Hsu makes a decision regarding the disposition of the contents of the sealed envelope.

F. PERTINENT STATUTES AND REGULATIONS

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.

(b) “Unwarranted” means without justification or adequate reason.

.....
7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

NRS 281.501

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

3. In a county whose population is 400,000 or more, a member of a county or city planning commission shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His direct pecuniary interest; or

(c) His commitment to a member of his household or a person who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his direct pecuniary interest or his commitment described in paragraph (c) where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth

in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the direct pecuniary interest or commitment.

4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest,

without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

.....
8. As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

(a) Who is a member of his household;

(b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;

(c) Who employs him or a member of his household;

(d) With whom he has a substantial and continuing business relationship; or

(e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

.....
NRS 281.553 Public officer or employee prohibited from accepting or receiving honorarium; "honorarium" defined; penalty.

1. A public officer or public employee shall not accept or receive an honorarium.

2. An honorarium paid on behalf of a public officer or public employee to a charitable organization from which the officer or employee does not derive any financial benefit is deemed not to be accepted or received by the officer or employee for the purposes of this section.

3. This section does not prohibit:

(a) The receipt of payment for work performed outside the normal course of a person's public office or employment if the performance of that work is consistent with the applicable policies of his public employer regarding supplemental employment.

(b) The receipt of an honorarium by the spouse of a public officer or public employee if it is related to the spouse's profession or occupation.

4. As used in this section, “honorarium” means the payment of money or anything of value for an appearance or speech by the public officer or public employee in his capacity as a public officer or public employee. The term does not include the payment of:

(a) The actual and necessary costs incurred by the public officer or public employee, his spouse or his aid for transportation and for lodging and meals while the public officer or public employee is away from his residence.

(b) Compensation which would otherwise have been earned by the public officer or public employee in the normal course of his public office or employment.

(c) A fee for a speech related to the officer’s or employee’s profession or occupation outside of his public office or employment if:

(1) Other members of the profession or occupation are ordinarily compensated for such a speech; and

(2) The fee paid to the public officer or public employee is approximately the same as the fee that would be paid to a member of the private sector whose qualifications are similar to those of the officer or employee for a comparable speech.

(d) A fee for a speech delivered to an organization of Legislatures, Legislators or other elected officers.

5. A public officer or public employee who violates the provisions of this section is guilty of a gross misdemeanor and, upon conviction, forfeits the amount of the honorarium.

.....
NAC 281.189 Scope of investigation by Executive Director. The Executive Director may investigate relevant issues and facts beyond those presented in an ethics complaint in determining his written recommendation of whether just and sufficient cause exists for the Commission to render an opinion on the ethics complaint.

G. RESULTS OF INVESTIGATION

The Executive Director found significant relevant issues and facts beyond those presented in the Request for Opinion. In conducting searches for publicly available information regarding Mayor Goodman, additional instances emerged which appeared to indicate a pattern of conduct exercised by the subject to potentially secure unwarranted privileges, preferences, or advantages for himself or members of his family within the third degree of consanguinity and/or to utilize his position in government for personal or financial gain. Accordingly, pursuant to the provisions of NAC 281.189, the Executive Director presents these findings for consideration by the panel by issue.

Allegations Regarding Violations of NRS 281.501: The Executive Director reviewed the response of Mayor Goodman and concurs in his assessment that no facts contained within the Request for Opinion appear to implicate any vote, disclosure, or abstention. Further, no additional investigative activities conducted by the Executive Director revealed any instance where any of the issues involved in the complaint came before the Las Vegas City Council for action. Therefore, the Executive Director finds no credible evidence exists to substantiate further investigation with regard to a potential violation of NRS 281.501(2), NRS 281.501(3), or NRS

281.501(4). Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to hear the matter and render an opinion on whether Mayor Goodman violated the provisions of NRS 281.501(2), NRS 281.501(3), or NRS 281.501(4).

Allegations Regarding Violations of NRS 281.481(2) in Relation to the iPolitix Cocktail Party and Surrounding Events: The Executive Director does not dispute certain facts presented by Mayor Goodman in his response to the complaint. As a public officer, he regularly attends the U.S. Conference of Mayors at taxpayer expense. The benefits to the taxpayer and the city in having Mayor Goodman attend such events seem obvious. Additionally, at two previous conferences Mayor Goodman, at his own expense, hosted cocktail parties for fellow mayors. In his response the Mayor states, “Aware of my trip to Washington for the conference, my son proposed that iMedia and iPolitix sponsor a reception for any attending mayors I might care to invite. I thought it a fine idea, fun for my fellow mayors and an opportunity for iPolitix to make acquaintances and contacts. The invitations announced, in so many words, that ‘Mayor Oscar Goodman invites you to enjoy martinis, cigars and snacks at a reception sponsored by iPolitix.... Either iPolitix or iMedia, I am uncertain which, reserved and paid for the party room, paid for the invitations, arranged with Hilton staff for the delivery of the invitations (aside from about 5 invitations which I handed out personally) and paid for all the food, drinks and cigars.”

Mayor Goodman further provides, “Approximately 30 mayors from across the country attended. One mayor from another municipality in Southern Nevada attended, as did a mayor from Northern Nevada. The remainder were all from cities outside Nevada.... And 3 City staff members who were in Washington D.C. at the time, all of whom were invited purely for the social element of free food and drink.” Mayor Goodman contends none of the city staff attendees could be considered to have been potential customers for the iPolitix product, nor could he imagine that any guest felt the slightest pressure to accept his invitation.

Mayor Goodman’s response further analyzes the provisions of NRS 281.481(2). He notes prohibited use of a government position invariably involves two elements, either the expenditure of government assets (typically funds, staff, or equipment) or the potential for jurisdictional abuse. He argues that none of the guests at his party could be construed as potentially being under the jurisdiction of the Las Vegas City Council, thus within his sphere of influence.

Previous opinions issued by the NCOE interpreting NRS 281.481(2) would indicate where there is at least some potential for influence, real or perceived, between the public official and the persons or entities from which benefit is being sought, the Commission has consistently ruled that the mere possibility that the individuals or entities may feel pressured by this influence implicates NRS 281.481(2). Conversely, where there exists no potential for influence based on the nature of the relationship between the public official and the individuals or the entities from which the benefit is sought, the Commission has ruled that NRS 281.481(2) has not been violated. Clearly, the potential for jurisdictional abuse appears to have been given considerable weight by the Commission in previous opinions.

Mayor Goodman further contends, “All of the methods of violating the use of power element of NRS 281.481(2) appear to fall into one of three distinct categories: First, to exercise control over government property, typically its funds or equipment; Second, to exercise control over government staff, causing them or attempting to pressure them into performing functions they otherwise would not; and Third, to obtain or attempt to obtain some favor or thing of value from a constituent – typically a business within the public officer’s jurisdiction – which the constituent might feel unable to refuse for fear of retribution.”

In his response, Mayor Goodman discusses the application of Commission Opinion No. 94-05, the Hawkins opinion – which the Executive Director also considered. (See Tab G, which contains the Hawkins opinion and relevant NCOE opinions noted below.) The Hawkins opinion, however, dealt with a city councilman who solicited money for a golf tournament from various companies, hotels, casinos, and individuals. The proceeds of the golf tournament were directed to a personal profit business venture organized by the councilman. Commission Opinion No. 94-05 discussed, in detail, the type of relationship the solicited businesses and individuals had with the city council which might implicate NRS 281.481(2).

The Executive Director disagrees, however, that exertion of influence is the gist of the allegation. Rather, the allegation focuses on the use of Mayor Goodman’s official position to provide an unwarranted privilege or advantage to his son, Ross, in whatever form that occurred (e.g. serving as host for the party, allowing his name to be used on the invitation, personally handing out invitations, allowing his visage and video footage to be used on the demo CD, promoting the CD and his son’s company, etc.). Only three of the previous opinions cited by Mayor Goodman involved the exertion of influence to provide unwarranted privileges, preferences, exemptions or advantages for a family member. Both Opinion No. 98-11 and Opinion No. 95-58 involved coercion of a public employee by a public officer to benefit a family member, which clearly is not relevant to the complaint at hand. Opinion No. 98-19 seems more on point than the Hawkins opinion:

“NCOE Opinion No. 98-19:

The issue in this matter is whether Ms. A used her position as a public attorney to grant an unwarranted privilege, preference or advantage for herself and a member of her household in violation of NRS 281.481(2).

NRS 281.481(2) provides:

A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any member of his household, any business entity in which he has a significant pecuniary interest, or any other person.

The ordinance questioned by Ms. A's superior, Mr. A and Ms. A, is essentially identical to NRS 281.481(2). Ms. A does not dispute that she is bound by both the ordinance and NRS 281.481(2), but requests advice on whether she, by her conduct, violated the

applicable provisions of city and state law. For our purposes, this opinion will refer to NRS 281.481(2) only.

The Commission concludes that there is a violation of NRS 281.481(2). Ms. A may not have intentionally directed a potential client to her husband for advice with the foreseeable outcome that the casual relationship would eventually turn into a paying attorney-client relationship, however, both Ms. A and Mr. A ultimately benefited financially from the arrangement. *This benefit was unwarranted because it was easily avoidable. It does not matter how, where, or why the situation presented itself. What does matter is that this situation could have been prevented by Ms. A's referring Ms. V's questions on civil law matters to a non-relative attorney or by Mr. A similarly providing such a referral. Public employees need to maintain a separation of their personal and private relationships that may in any way provide an unwarranted privilege or advantage that otherwise would not have presented itself had the person not been a public employee.*" (Emphasis added.)

The Executive Director believes the opportunity for Ross Goodman, through his company iPolitix, to host a cocktail party with potential clients for the new CD would not have existed had Oscar Goodman not held the office of Mayor. There is no evidence to suggest otherwise. As such, involving himself in the cocktail party, inviting guests to attend, and participating in related activities in support of his son's business endeavor not only gave to his son, Ross, an advantage he may not otherwise have had, but also failed to maintain an appropriate separation between Mayor Goodman's personal relationships and public duties. Thus, Mayor Goodman's conduct did bestow an unwarranted privilege or advantage to son, Ross Goodman, and further to Ross Goodman's company, iPolitix, that otherwise would not have presented itself had Mayor Goodman not been a public officer.

Of additional interest is Mayor Goodman's supposition that, "Most of the Commission's prior opinions considering NRS 281.481(2) have focused upon the second part of the statute – the issue of whether a particular advantage or benefit was 'unwarranted.' Without waiving any arguments, I would submit that *the just and sufficient cause stage of the Commission's work requires little effort upon the issue of what might be unwarranted.* The Washington D.C. event I hosted certainly had a social component, it certainly was conducive to cultivation of a collegial and convivial relationship with fellow mayors, all of which serves a useful purpose for my constituents in Las Vegas. *The issue of whether any business opportunity for iPolitix was offset by the advantage of having the Mayor of Las Vegas and three of his staffers able to cultivate personal relations with foreign mayors (thereby making the iPolitix advantage 'warranted') does not yet require examination by the Commission.* Without a predicate finding that my government power was used – as has been delineated by a wealth of prior Commission opinions – *the issue of whether there may have been any advantage bestowed is of no consequence.*" (Emphasis added.)

The Executive Director contends the statements of Mayor Goodman, as cited in the previous paragraph, evidence an unwarranted privilege or advantage was bestowed upon son Ross

Goodman. The social component discussed by the Mayor as a benefit to the city could have been achieved by the Mayor, for the third consecutive year, hosting his own cocktail party. Mayor Goodman's contention that whatever benefit perceived to the city by such an event offsets a potential gain to his son's company. There appears to be no legal authority to support his theory. Though the Commission appears to have considered the interplay of familial relationships in regard to the application of NRS 281.481(2) on only a few occasions, the Executive Director finds the unique facts and circumstances surrounding the father/son relationship constitutes just and sufficient cause for the Commission to hear the matter and render an opinion as to whether such facts and circumstances amount to conduct by Mayor Goodman which may violate of NRS 281.481(2).

In his March 16 interview with the Executive Director, Mayor Goodman further stated no city resources were utilized in the planning or execution of the party. No evidence was provided with the complaint nor found within the Executive Director's investigation to substantiate the use of city resources with regard to same. However, the genesis of the party was, as Mayor Goodman stated, a direct proposal from his son Ross Goodman. It must be considered that the purpose of the party was to promote the new iPolitix CD. One of the subjects on the CD was Mayor Goodman. And the raw footage obtained for the promotional CD was, as the Mayor has acknowledged both in printed media and expressly to the Executive Director, property purchased by the City of Las Vegas (vis-à-vis recorded videotapes) and provided to California-based representatives of iPolitix (a for-profit company in which Mayor Goodman's son, Ross, is a partner) for their use at no cost. The evidence may also implicate additional provisions of NRS 281.481(2) or 281.481(7), as the general public is required to purchase videotapes of press conferences and other events from the City of Las Vegas television station. Robert Rose, who submitted this request for opinion, was required to pay \$25 per tape for two tapes of the Mayor's news conferences to submit as corroborating evidence with the complaint. Additionally, Mr. Rose lost his original receipts for same and was required to pay \$2 to the City for duplicate receipts to supply this office (see Tab J). Therefore, the evidence indicates there appears to be just and sufficient cause for the Commission to consider whether such conduct violates the provisions of NRS 281.481(7) and NRS 281.481(2).

The Executive Director interviewed Las Vegas City Councilman Michael Mack on March 16, 2004. Councilman Mack is the business partner of Ross Goodman in the iPolitix venture, and was represented by attorney Bruce Judd during the interview. Councilman Mack maintains he had no prior knowledge of the source of the raw footage for the iPolitix CD until he read about the mayor providing iPolitix with the footage in the newspaper. Councilman Mack further stated he has not directly consulted with the Mayor on issues relating to iPolitix, including the cocktail party, and he did not attend the U.S. Conference of Mayors meeting as he remained in Las Vegas to attend a city council meeting. Councilman Mack agreed to provide the Commission with a copy of the iPolitix CD, which was forwarded to our office by attorney Bruce Judd on Monday, March 22, 2004. No evidence was provided with the complaint nor found within the Executive Director's investigation to dispute information provided to the Executive Director by Councilman Mack.

Mayor Goodman did state, in the course of the March 16 interview, he did not personally profit from any of the activities about which the Executive Director requested information. However, the ethics statutes do not exist merely to prohibit officials from personally profiting from such activities. Providing an unwarranted privilege or advantage to his son, Ross, and his son's business, and further, utilizing city resources (video tapes) for the benefit of the for-profit business venture of his son directly implicates ethics law.

It should be noted Mayor Goodman supplied the Commission, on March 24, with evidence he reimbursed the City of Las Vegas for the cost of four videotapes (see Tab E). However, an express admission that the tapes were city property and subsequent reimbursement to the City after the fact is not a legitimate defense in this issue, nor was it directly raised by Mayor Goodman as a defense. Directly on point is the Breslow opinion, Commission Opinion No. 98-21 (see Tab G), which provided:

NCOE Opinion No. 98-21:

"The questions before the Commission are: (1) whether Mr. Breslow's use of the City of Sparks issued cell phone for personal business and family calls violated NRS 281.481(7); and (2) whether or not these violations were willful.

After careful analysis, the Commission determined that NRS 281.551(6) does not offer Mr. Breslow a safe harbor. *Mr. Breslow never sought legal advice from the Sparks City Attorney's office* about using his cell phone for personal business or family calls and never sought a confidential first party opinion request from this Commission regarding the use of his cell phone.

Mr. Breslow is not a member of the legislature so he is not exempt from NRS 281.481(7). As such, the Commission must focus on the language of NRS 281.481(7) and apply that language to Mr. Breslow's actions regarding the use of his cell phone.

NRS 281.481(7) clearly states that "this section does not prohibit the use of telephones ... if there is not a special charge for that use." *However, it is clear from the testimony and exhibits that Mr. Breslow's cell phone use created special charges for the City of Sparks.* Depending on the air package, charges are incurred each time a call is made or received on a cell phone. Even if the phone call is absorbed by the air package, the incoming or outgoing call diminishes the remaining airtime. Long distance calls always generate additional charges. Finally, depending on where the call is made or received, additional roaming charges may be incurred. Unlike a landline that comes with unlimited free local calls in Nevada, all calls made or received with cell phones generate some type of charge.

The Commission feels that it is common sense for a public officer or employee to realize that taxpayers should not be expected to pay for a public officer's or employee's cell phone call to schedule a personal haircut, contact friends, or to conduct personal business. That is not an appropriate use of taxpayer dollars. To allow such use would be against public policy and a violation of NRS 281.481(7).

As such, after analyzing the facts in this matter, the Commission concludes that Mr. Breslow did violate NRS 281.481(7) when he used his cell phone for personal business. Furthermore, based on the testimony presented at this hearing, including Mr. Breslow's own statements, the Commission finds that Mr. Breslow's violation was willful. *Since the Commission determined that Mr. Breslow's violation was willful, pursuant to NRS 281.551, the Commission also imposes a civil penalty of One Thousand Dollars (\$1,000.00). This penalty must be made payable to the State of Nevada Controller's Office and received by 5:00 p.m. Pacific Standard Time on July 15, 2000. Finally, the Commission agrees to accept the amount of Three Thousand One Hundred and Thirty-Nine Dollars (\$3,139.00) as agreed upon by all parties, as restitution to the City of Sparks for Mr. Breslow's personal calls on the City of Sparks cell phone.*

This is not to say, however, that the Commission feels public officers or employees should not have government issued cell phones. The Commission realizes that cell phones serve a valuable purpose in today's society in that they allow public officers and employees to conduct state business when they are away from their offices, waiting in airports, in between off-site meetings, etc. *However, the Commission wishes to make it clear that government issued cell phones should only be used for official business, not personal use.*" (Emphasis added.)

The Executive Director believes sufficient credible evidence exists to present issues surrounding the iPolitix party and the promotional CD to the full Commission. Only the full commission has the authority to determine if the conduct of Mayor Goodman in relation to these issues rises to the level of a violation of state law. Therefore, the Executive Director recommends the panel find just and sufficient cause exists for the Commission to hear the matter and render an opinion on whether Mayor Goodman violated the provisions of NRS 281.481(2) or NRS 281.481(7).

Acceptance of Use a 2003 Cadillac Seville STS: The acceptance of this gift was first noticed during an internet search conducted by the Executive Director on March 10, 2004 (see newspaper article and related evidence under Tab K). A December 10, 2002 article by Ed Koch of the *Las Vegas Sun* reported the City of Las Vegas had adopted a written policy "for handling of gifts that in the past would have gone straight to elected officials and could have been used in whatever manner the recipient chose." Reporter Koch noted "With little discussion, the council members unanimously approved Wednesday a resolution that requires any gift or donation worth more than \$25,000 to be brought before the City Council for a vote on whether it should be rejected or accepted.... Las Vegas City Councilwoman Lynette Boggs-McDonald said she proposed the resolution because she believed more oversight was needed. The council needed to have more say about what major gifts and donations should be accepted by the city as well as the conditions for acceptance and use of such gifts.... The resolution also requires the approval of the city manager for all gifts valued at less than \$25,000. The new rules were designed to provide more accountability, but also could affect Mayor Oscar Goodman, who has a history of giving and accepting large gifts. Goodman recently was provided use of a new black 2003

Cadillac Seville STS from John Tomaras of Cadillac of Las Vegas. In October, Goodman received a \$100,000 contract to endorse Bombay Sapphire gin. Goodman says he intends to use the vehicle when conducting official city business.” A December 5, 2002 Koch article provided, “Goodman said the Cadillac gift might not be affected by the resolution because ‘it is a loan, not a gift. After 4,000 miles, it goes back’ to the dealer.”

During the March 16, 2004 interview with Mayor Goodman, the Mayor reviewed the information request submitted to him at the interview by the Executive Director – which contained a request for “evidence which clarifies the agreement, whether written or oral, between either the City of Las Vegas or yourself and John Tomaras/Cadillac of Las Vegas for the use of a 2003 Cadillac Seville STS; the stipulated use of the vehicle; the value of the vehicle; and the terms for its return, if any.”

Though he did not expressly confirm or deny the gift of use of the Cadillac, Mayor Goodman emphasized, during the March 16 interview, he did not personally take ‘one cent’ in relation to any of the items requested by the Executive Director. However, the ethics statutes do not exist merely to prohibit officials from personally profiting from such activities. Further, in his March 24 response, Mayor Goodman discusses the Executive Director’s request regarding “what kind of car I drove two years ago.”

The Executive Director telephonically interviewed Las Vegas City Councilwoman Lynette Boggs-McDonald on March 18, 2004. Ms. Boggs-McDonald recalled sponsoring the city council resolution regarding gifts. To summarize the statements of Ms. Boggs-McDonald: In December 2002, she introduced a resolution which would require the City Council to approve gifts to the city in excess of \$25,000. The concern initiated over the Mayor's October, 2002 endorsement of Bombay Sapphire gin, where Mayor's contract for \$100,000 for endorsing the gin resulted in a substantial gift. Half of the money was given to the non-profit Meadows School. The other half was dedicated to homeless programs. Ms. Boggs-McDonald felt the council should have a say as to where substantial gifts were directed, so that it wasn't necessarily given to individual council member's pet projects. She referenced a \$1,000,000 gift to the City of New York which, in the aftermath of September 11, 2001, was returned to its donor due to concerns regarding the appearance of impropriety. The Executive Director further asked Ms. Boggs-McDonald if the Mayor had received a gift of use a Cadillac automobile prior to the introduction of her resolution. She stated she believed he had, another issue of concern in proposing the resolution.

A review of the financial disclosure statement filed on February 20, 2003 does not indicate that Mayor Goodman reported acceptance of use of the Cadillac as a gift. Newspaper reports referenced Mayor Goodman as intending to use the vehicle when conducting official city business. Arguably, the use of the Cadillac could be construed as a gift to the City, and not officially to Mayor Goodman. However, if Mayor Goodman is the only public officer using the gift and even if only when conducting official city business, it can also be argued that the use may tend improperly to influence a person in his position to depart from the faithful and impartial discharge of his public duties. At a minimum, the substantive nature of the gift

(valued, according to newspaper accounts, at \$55,600) creates a public perception of the appearance of impropriety.

The Executive Director believes the above information constitutes sufficient credible evidence to further explore a nexus between the acceptance of use of the Cadillac and a potential violation of NRS 281.481(1). Though the acceptance of the use of such a substantial gift may merely create the appearance of impropriety, it may also implicate the perception that a reasonable person may tend to be improperly influenced to depart from the faithful and impartial discharge of his public duties. Only the full commission has the authority to determine whether Mayor Goodman's acceptance of such a substantial gift might tend improperly to influence a reasonable person to depart from the faithful and impartial discharge of his public duties and if so, whether the action would rise to the level of a violation of state law. Therefore, the Executive Director recommends the panel find just and sufficient cause exists for the Commission to hear the matter and render an opinion on whether Mayor Goodman violated the provisions of NRS 281.481(1) in regard to the acceptance of the use of the automobile.

Endorsement of Bombay Sapphire Gin: Mayor Goodman's endorsement of Bombay Sapphire gin has been widely reported by the media in southern Nevada. According to an official City of Las Vegas media release (see Tab M for the press release and related information) issued October 9, 2002, "Mayor Oscar B. Goodman has found a unique way to generate \$100,000 for charity – he is proclaiming Bombay Sapphire as his gin of choice. In exchange for that endorsement, 100% of the mayor's fee will be donated to the locally disadvantaged... Goodman will receive the first check in the amount of \$50,000 to benefit the city of Las Vegas 501c3 charitable fund to help the homeless. The second \$50,000 check will be donated to the academically talented but economically disadvantaged students who attend the college preparatory program at the Meadows School."

Pursuant to the provisions of NAC 281.189, the Executive Director investigated the endorsement of Bombay Sapphire gin and its nexus to provisions of the Ethics in Government Law. NRS 281.553 provides:

- "1. A public officer or public employee shall not accept or receive an honorarium.
2. An honorarium paid on behalf of a public officer or public employee to a charitable organization from which the officer or employee does not derive any financial benefit is deemed not to be accepted or received by the officer or employee for the purposes of this section.
3. This section does not prohibit:
 - (a) The receipt of payment for work performed outside the normal course of a person's public office or employment if the performance of that work is consistent with the applicable policies of his public employer regarding supplemental employment.
 - (b) The receipt of an honorarium by the spouse of a public officer or public employee if it is related to the spouse's profession or occupation.

4. As used in this section, “honorarium” means the payment of money or anything of value for an appearance or speech by the public officer or public employee in his capacity as a public officer or public employee. The term does not include the payment of:

(a) The actual and necessary costs incurred by the public officer or public employee, his spouse or his aid for transportation and for lodging and meals while the public officer or public employee is away from his residence.

(b) Compensation which would otherwise have been earned by the public officer or public employee in the normal course of his public office or employment.

(c) A fee for a speech related to the officer’s or employee’s profession or occupation outside of his public office or employment if:

(1) Other members of the profession or occupation are ordinarily compensated for such a speech; and

(2) The fee paid to the public officer or public employee is approximately the same as the fee that would be paid to a member of the private sector whose qualifications are similar to those of the officer or employee for a comparable speech.

(d) A fee for a speech delivered to an organization of Legislatures, Legislators or other elected officers.”

As defined by NRS 281.553(4), “honorarium” means the payment of money or anything of value for an appearance or speech by the public officer or public employee in his capacity as a public officer or public employee. As the city press release so deemed it, the Mayor’s ‘endorsement’ of Bombay Sapphire gin must be construed as an appearance in his capacity as a public officer. The city press release states, “In exchange for that endorsement, 100% of the mayor’s fee will be donated to the locally disadvantaged.” As the acceptance of money is implicated, the provisions of NRS 281.553(4) are implicated.

It cannot be substantiated at this juncture whether the two \$50,000 checks were made payable to the Mayor, the city, or the Meadows School. Thus, relying on other publicly available sources of information, the Executive Director finds an established contractual relationship between the Mayor and Bombay Sapphire gin (Mayor Goodman confirmed he had signed a contract with Bombay Sapphire gin on Crossfire CNN, footage which is on the iPolitix CD). Further, the Executive Director concludes it is likely the contribution of \$50,000 to the Meadows School, whether through Mayor Goodman as a conduit or on his behalf directly to the school, may violate the provisions of NRS 281.553(1). The Executive Director reaches this conclusion as the Meadows School does not appear to meet the honorarium criteria set forth by NRS 281.553(2) – it does not appear the school is a charitable organization. No evidence found during internet regarding the Meadows school on March 24 would indicate its status is that of a charitable organization (see Tab I).

Additionally, Mayor Goodman’s biographical information on the City of Las Vegas web site states, “Oscar and Carolyn G. Goodman have been married for 40 years. A recipient of the Distinguished Nevadan Award, Carolyn is the founder and president of the Meadows School Board of Directors. The Meadows School is the only non-profit, non-sectarian private school in

Nevada.” Thus, acceptance of the honorarium to benefit the Meadows School may also implicate the provisions of:

- NRS 281.481(2), in relation to using his position in government to secure or grant unwarranted privileges, preferences, or advantages for a person (his wife, vis-à-vis the Meadows School) to whom he has a commitment in a private capacity to her interests – as well as a pecuniary interest established by the marital union and her employment relationship with the school; and
- NRS 281.481(10), in relation to seeking other contracts through the use of his official position (and in potential violation of NRS 281.553).

As previously noted, the Executive Director telephonically interviewed Las Vegas City Councilwoman Lynette Boggs-McDonald on March 18, 2004. Ms. Boggs-McDonald recalled sponsoring a city council resolution regarding gifts. To reiterate the statements of Ms. Boggs-McDonald: In December 2002, she introduced a resolution which would require the City Council to approve gifts to the city in excess of \$25,000. The concern initiated over the Mayor's October, 2002 endorsement of Bombay Sapphire Gin, where Mayor's contract for \$100,000 for endorsing the gin resulted in a substantial gift. Half of the money was given to the non-profit The Meadows School. The other half was dedicated to homeless programs. Ms. Boggs-McDonald felt the council should have a say as to where substantial gifts were directed, so that it wasn't necessarily given to individual council member's pet projects. Clearly, the issue of such gifts has been of concern to the entire city council, as the resolution was adopted unanimously by the city council on December 18, 2002.

The October 9, 2002 city press release indicates the second \$50,000 was to benefit Las Vegas 501c3 charitable fund to help the homeless. However, a January 28, 2004 article by *Las Vegas Sun* reporter Timothy Pratt provides, “Nearly a year and a half after Las Vegas Mayor Oscar Goodman said he would donate \$50,000 to the homeless that he earned endorsing gin, the money is still locked up in an account, the mayor said Tuesday. Goodman announced that he would get \$100,000 for pitching Bombay Sapphire gin in October 2002, giving the nod to the brand after two others had courted the martini-loving mayor. The mayor initially said money from gin endorsements would go into city coffers. In announcing the Bombay Sapphire contract, which earned national publicity for Goodman, he amended his statement, saying half the money would go to programs for the homeless and the other half would provide scholarships at the Meadows School, which was co-founded by his wife, Carolyn. The Meadows School received its share that October, Carolyn Goodman said. When asked about the homeless money on Tuesday, the mayor said it was in a ‘special revenue fund.’ It hadn’t been earmarked for a specific project or program, he said, because ‘\$50,000 represents an awful lot of gin – I’m not just going to spend it on anything.’” Later in the same article, it states, “Meanwhile, the gin money is in an account with other funds, earning about 4 percent interest, said Mark Vincent, director of finance and business services for the city. But the \$3,000 in interest earned so far wouldn’t go to the homeless, he said. The City Council decides how the interest is spent during its regular budgeting process, he said.”

The Executive Director concludes the existence of the contract for endorsement of Bombay Sapphire gin, the question of to whom the endorsement funds were payable (whether to Mayor Goodman, the city, or the Meadows School), and the confusion as to the disposition of the funds and a potential nexus to the honorarium statute constitutes sufficient credible evidence to further explore the Mayor's involvement in the contract to endorse Bombay Sapphire gin. Only the full commission has the authority to determine if Mayor Goodman used his position in government in a manner which directly implicates the provisions of NRS 281.553, NRS 281.481(2), or NRS 281.481(10), and if so, the action would rise to the level of an actual violation(s) of state law. Further, the panel may want to consider potential violations of NRS 481.481(1), or NRS 281.481(7), with the reference to 281.481(7) relating to the use of city staff to promote the private contractual agreement Mayor Goodman entered into with Bombay Sapphire gin. The Executive Director recommends the panel find just and sufficient cause exists for the Commission to hear the matter and render an opinion on whether Mayor Goodman violated the provisions of NRS 281.553, NRS 281.481(2), and NRS 281.481(10).

Endorsement of a Contest for Jane Magazine Which Included Renaming a City Street by Las Vegas Mayor Oscar Goodman for the Contest Winner: The existence of the *Jane* magazine contest was noted during an internet search (see Tab L for related materials) conducted by the Executive Director on March 10, 2004, which revealed a February 10, 2004 *Las Vegas Sun* article by Timothy McDarragh, for which the opening sentence was "For sale: the streets of Las Vegas." The article continued, "One of the prizes in a contest sponsored by Jane magazine is getting a Las Vegas street named after you, with a ceremony presided over by Las Vegas Mayor Oscar Goodman. In exchange, the glossy paid the city \$2,000.... Starting today Goodman appears in an ad for the contest on the magazine's web site and in the magazine's March issue, which hits newsstands Wednesday.... Mayoral spokeswoman Elaine Sanchez confirmed the details to VegasBeat."

The Executive Director subsequently surfed *Jane Online* at www.janemag.com, where the home page contained a photograph of Mayor Goodman and the statement "Oscar B. Goodman wants YOU (to shop at JANE STREET, that is)." Hyperlinking over to Jane Street, another photograph of Mayor Goodman appeared with the verbiage "As if finding out the coolest places to shop online wasn't reward enough, have we got a prize for you. Believe it or not, we at JANE have friends in high places including the mayor of Vegas himself, Oscar B. Goodman. Register to shop on JANE Street, and you'll be entered to win a trip to Vegas, gifts from our sponsors and the chance to have a street in Vegas named after you, you, you by the good mayor." Further, in the Jane Street Sweepstakes official rules, the Grand Prize winner selection notes that "on or around April 12, 2004" one entry will be randomly selected to win.... A street named after them by the mayor of Las Vegas." The Executive Director notes that in order to retrieve the contest rules, it was necessary she register to shop at Jane Street. She did not, however, actually shop at Jane Street and further notes that should she be selected as grand prize or other winner of this sweepstakes, she will decline any prize in connection with the investigation.

On the morning of March 11, 2004, the Executive Director obtained the March 2004 issue of *Jane* magazine. Pages 90-91 of the publication contain a two-page advertisement for the contest. Page 90 has a full-page photograph of Mayor Goodman with text that reads, "THIS MAN WANTS TO MEET YOU IN VEGAS." Detail box in the bottom corner reads, "WHY? TO NAME A VEGAS STREET AFTER YOU. WHO IS HE? LAS VEGAS MAYOR OSCAR B. GOODMAN. HOW TO WIN? SHOP JANE STREET AND GET THE DEETS. JANE STREET – for the best in online shopping. Visit www.janemag.com/street to let the e-commerce commence. What's in it for you? When you register, you will be eligible to win a trip to Vegas and to have a street named after you by the mayor himself, Oscar B. Goodman (pictured). Who says you don't have friends in high places?" Smaller photo caption reads, "Mayor Oscar B. Goodman, your new best friend."

After reviewing the magazine advertisement on the morning on March 11, the Executive Director contacted mayoral spokeswoman Elaine Sanchez to request information regarding the contest. Though Ms. Sanchez said she would provide such information to the Executive Director, it was not, nor has it been to this date, provided. Apparently, Ms. Sanchez received a request regarding information about the same contest from political columnist Jon Ralston. Ms. Sanchez must have reported the two, individual requests to Mayor Goodman. Mayor Goodman subsequently contacted Las Vegas City Attorney Brad Jerbic and/or Deputy City Attorney John Redlein.

Publication of Ralston's electronic Flash later that day indicates he had spoken with a 'spokeswoman' for the Mayor, and it appears this spokeswoman may have indicated to Ralston that the ethics investigation had expanded. There would be no other explanation for Ralston printing in the March 11, 2004 Flash, "In the latest iteration of Oscar Goodman the Huckster, His Honor has sold his and the city's name (and a street to be named later) to Jane magazine, thus expanding the ethics inquiry into his abuse of his position in government. (The arrangement was briefly mentioned last month by Sun columnist Tim McDarrah, but the grotesqueness of the deal is just now coming into focus for those who have seen the magazine and the web site.) I understand the ethics folks already are inquiring into the nature of the deal, which comes on the heels of the mayor's gin contract and his fooling his mayoral brethren into attending an event promoting his son's business --- also subjects of the ever-expanding ethics inquiry. He's starting to make Recorder Fran Deane look like an ethics misdemeanor - he's positively polyethically perverse. Many folks who have seen the double truck ad have done double takes as they have marveled at how low the mayor will sink for attention. But it is all crassness for the sake of charity, city officials say. A mayoral spokeswoman says the magazine contacted the city and sought the opportunity. Of course there was no chance the mayor would turn it down. The city supposedly received a check for \$2,000 to get reimbursed for the street name change. And, the spokeswoman claimed, Goodman will write a personal check for \$2,000 to the Make A Wish Foundation. Uh huh."

At approximately 4:30 p.m. on March 11, Las Vegas City Attorney Brad Jerbic contacted Commission Counsel Nancy Lee Varnum regarding the investigation of RFO 04-05. Jerbic alleged the Executive Director had appeared on the television show Face-to-Face with Jon

Ralston the previous Friday, March 5, 2004, and specifically commented on the investigation of Mayor Goodman. (When the Executive Director met with Mayor Goodman on March 16, he acknowledged he had seen a tape of the television show and he acknowledged the Executive Director did not comment on his case. Mayor Goodman did, however, say he was personally offended by the Executive Director's appearance on the show of a 'creep' like Jon Ralston.) Jerbic also referenced the above-cited edition of Flash, and the coincidence that Mr. Ralston and the Executive Director requested information regarding the magazine on the same day.

From approximately 5:00 p.m. to 6:00 p.m. on Thursday, March 11, Commission Counsel Varnum and the Executive Director conversed with Brad Jerbic and Deputy City Attorney John Redlein on the telephone about this matter. I prefaced the conversation with a question regarding whether the City Attorney was now representing the Mayor in this investigation, and was told he was not. (The Mayor confirmed this on March 16.) Despite this, both Redlein and Jerbic made baseless, inflammatory, and patently false allegations that Mr. Ralston somehow influences the investigative process or provides the Commission with information. The two asked pointed questions about where the investigation was going, despite my protest that I was meeting with the Mayor on March 16 and would discuss it with him personally. Subsequently, Redlein directly commented to Counsel Varnum for a lengthy period of time in an attempt to persuade Commission Counsel regarding how the Commission should interpret the provisions of NRS 281.481(2) and NRS 281.553 – in the event the city did not agree with the pending results of the Executive Director's investigation.

The conduct of Jerbic and Redlein was entirely inappropriate, and may implicate NRS 281.551(2). This is not the first time the City Attorney's office has contacted this office during an investigation, vis-à-vis the conduct of Mr. Redlein. I am personally aware that Redlein spoke at length to Commission Counsel about RFO 03-40 during the investigation period, and he also called me on at least two occasions during the investigation of the same case. This despite the fact that the subject, Las Vegas City Councilman Michael Mack, had his own private legal representation. Redlein's comments appeared to be an attempt to influence the outcome of the investigation of RFO 03-40, as does the present conduct of Jerbic and Redlein - which has interfered in the investigation process for RFO 04-05, potentially in violation of NRS 281.551(2).

Additionally, the Executive Director shares with the panel her concerns that the City Attorney's office or the Mayor or his representatives have leaked information regarding the investigation, which have the potential to compromise the ability to obtain impartial witnesses and accurate information, e.g. information that is first party and without prior coverage by media outlets.

This concern is further supported by a telephone call received by the Executive Director on Thursday, March 18. Michael Squires, a reporter for the Las Vegas Review-Journal, informed the Executive Director the Mayor had provided Mr. Squires a copy of a complaint (RFO 04-12) against Mayor Goodman which the Executive Director returned to the requester on March 18 citing lack of jurisdiction (and of which the Executive Director had subsequently faxed a copy to Mayor Goodman). The Mayor allegedly told Michael Squires he believes that political

columnist Jon Ralston may be ‘manipulating’ this Commission in the investigation of RFO 04-05. The Mayor allegedly mentioned, to Mr. Squires, the incident last week where apparently Mr. Ralston and I both asked the Mayor's public information office (Elaine Sanchez, spokeswoman) for information regarding an endorsement by the Mayor in *Jane* magazine, a national publication.

The Executive Director provides this information to the panel as part of the official investigation of this matter, without making any recommendations regarding the conduct of Mr. Jerbic or Mr. Redlein, as they are not subjects of the complaint nor are they designated legal counsel for the subject in this matter. Rather, the Executive Director brings forward this information as an explanation regarding the absence of more specific city-supplied detail regarding the magazine contest.

In the March 16 interview with Mayor Goodman, he expressly stated the magazine contest arose from contact initiated by *Jane* magazine to the city public information office. Mayor Goodman said he did not have any involvement in the matter other than to direct the public information officer to proceed since 20,000,000 women reading about Las Vegas via the magazine would be good for the city. Media reports indicate the city itself was paid \$2,000 for Mayor Goodman's endorsement of the contest. However, unless the funds were paid directly to a charitable organization on behalf of Mayor Goodman (meaning, a charitable organization with an Internal Revenue Service charitable organization status), the honorarium provisions of NRS 281.553(1) may be implicated. Further, Ms. Sanchez stated to me in our March 11 telephone conversation that the city renames streets ‘all the time.’ If this is true, evidence may exist to establish a pattern of noncompliance with the provisions of NRS 281.553(1). At a minimum – as the *Sun* noted – the concept that “For sale: the streets of Las Vegas” and the contest's promotional verbiage as presented both in the *Jane* magazine advertisement and at *Jane Online*, combined with the use of city resources vis-à-vis the public information office, create the public perception of an appearance of impropriety.

The Executive Director believes the above information constitutes credible evidence of just and sufficient cause for the full Commission to consider this issue and render an opinion as to whether the facts and circumstances implicate the provisions of NRS 281.553 or NRS 281.481(7). Only the full commission has the authority to determine if Mayor Goodman's conduct may rise to the level which substantiates a violation of NRS 281.553 or NRS 281.481(7). Therefore, the Executive Director recommends the panel find just and sufficient cause exists for the Commission to hear the matter and render an opinion on whether Mayor Goodman violated the provisions of NRS 281.553 and NRS 281.481(7).

H. ADDITIONAL INFORMATION

The provisions of NRS 281.481(2), as they pertain to using a position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for oneself, any business

entity in which one has a significant pecuniary interest, or more specifically to *any other person*, were declared unconstitutionally vague in District Court (in re: *Gates v. NCOE*, Case No. A393960, District Court, Clark County, Nevada, see Tab N). The 2003 Nevada Legislature struck the phrase “any other person” from NRS 281.481(2), and added a reference to “any person to whom he [a public officer or employee] has a commitment in a private capacity to the interests of that person,” as defined by NRS 281.501(8).

Though this revision to NRS 281.481(2) served to clarify those specific persons to whom a public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages, the provisions of NRS 281.501(8) remain somewhat ambiguous. Specifically, the Executive Director references NRS 281.501(8)(e). NRS 281.501(8) provides:

“8. As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.”

Increasing public scrutiny regarding abuse of public office and, in absence of actual abuse, the exponential perception of the appearance of impropriety, necessitates more explicit interpretation of the provisions of NRS 281.481(1) and NRS 281.481(2) by the Commission. While the public would like to believe the application of ethics laws to be black and white, the Commission is continually confronted with shades of gray – areas where statutes are ambiguous and the Commission itself is charged pursuant to statute with the interpretation of ethics law to a given set of facts and circumstances. NRS 281.481(1) does not require that a public officer or employee actually realize a monetary or personal gain; rather, the fact that such a gain was sought might implicate a violation of the statute. A violation of NRS 281.481(2) may not always require a potential for jurisdictional abuse or the actual exertion of influence.

The Executive Director thoughtfully considered the application of Mayor Goodman’s direct statements as viewed on videotapes of press conferences, and additionally reviewed in transcript version:

January 28, 2004

Mayor Goodman reported the party as part of his regular weekly news conference, where he was recounting his attendance at the U.S Conference of Mayors meeting in Washington, DC.

- In questioning, Mayor Goodman confirmed invitations to the iPolitix party contained both his name and title, and that he personally handed them out. When asked if he felt there was any kind of conflict, Mayor Goodman stated “None. I didn’t ask for anything.”
- Mayor Goodman continued, “I invited people there. I told them that I’m there to help my son.”

- When asked if the people attending the party knew the Mayor's son was involved, Mayor Goodman stated, "I made that very clear." However, the Mayor acknowledged his son's name was not on the invitation.
- Mayor Goodman further stated, "I went in and I said, 'You know, I'm here as a good father. I love my son and I think it's a very interesting product. I hope you take a look at it.'"
- When asked if he had ever encouraged anybody to buy the product or use the product, Mayor Goodman stated, "Oh, absolutely. It's a phenomenal product."
- When asked if he had used the product Mayor Goodman stated, "They use me as the example in it. I am the disc."
- When asked if he owned part of the corporation, Mayor Goodman stated, "I made a conscious decision not to have any interest direct or indirect other to (sic) help my son who I love. And if anybody tells me I can't help my son who I love, they can drop dead."

February 5, 2004

By the time of this news conference, Mr. Robert Rose had provided media outlets in Las Vegas with his initial complaint (RFO 04-04, returned due to lack of credible evidence to corroborate newspaper accounts) with regard to the iPolitix matter. Mayor Goodman was questioned about the complaint.

- Mayor Goodman stated, "I don't believe I did anything inappropriate."
- He further stated, "I did not abuse my position to benefit my son."
- When asked to clarify, Mayor Goodman stated, "To abuse the power of the office. I had no power over these folks that I invited to the cocktail party."
- Mayor Goodman stated, "I'm not going to do anything inappropriate in the future and I haven't done anything inappropriate in the past."
- When asked about his discussion regarding the statute with the city attorney, Mayor Goodman stated, "Basically using your position as a tool to persuade people to do something. I didn't do that."
- When further questioned regarding the use of the honorific title Mayor, Mayor Goodman stated, "I am the Mayor. I am the Mayor. I'm the Mayor."

Further, reporter Michael Squires of the *Las Vegas Review-Journal* quoted Mayor Goodman on March 13, 2004, as stating, in defense of loaning city-owned tapes to iPolitix, "Everything I do has to do with the mayor and the city." (See article behind Tab J.)

As outlined above, statements attributed to Mayor Goodman (the majority of which are quoted directly from transcripts of his press conferences), greatly concerned the Executive Director during the course of the investigation. Further in the personal interview with Mayor Goodman, he indicated he receives numerous gifts in his capacity as Mayor. He specifically stated that almost every person who visits him in his city office brings him a gift. A review of the Mayor's financial disclosure statements (see Tab F) reveal that due to the minimal amount of gifts actually reported by Mayor Goodman, unless the vast majority of said gifts are of de minimis value, he cannot possibly be reporting all such gifts pursuant to the provisions of NRS 281.561.

In the personal interview conducted on March 16, 2004. Mayor Goodman asked the Executive Director whether his participation in Martinis with the Mayor or Coffee with the Mayor violated of ethics statutes. The issue had not been previously under consideration by the Executive Director. It is clear that the concept of Coffee with the Mayor has been a long-standing practice with Mayor Goodman's administration (see Tab O, which contains City of Las Vegas press releases to promote these events dated from as far back as 2002 to as recently as February 23, 2004, all of which were obtained from the official City of Las Vegas web site.). In the personal interview, Mayor Goodman indicated that coffee shops which sponsor such events completely underwrite the cost of coffee and/or refreshments.

Additionally, the Mayor indicated similar venues themed "Martinis with the Mayor" are hosted at various bar establishments in Las Vegas, with the cost of martinis completely underwritten by Bombay Sapphire gin. Mayor Goodman illustrated the existence of such events by posters and/or photos of such events on framed display in his office. The Executive Director searched the City of Las Vegas web site for evidence of promotion of martini events, but found none. However, a January 27, 2004 article by *Las Vegas Sun* reporter Emily Richmond reported the existence of such events, "As part of his work to promote Bombay Sapphire gin, Goodman has participated in events such as 'Martinis with the Mayor.'" Further, the Mayor expressly comments about such events in footage contained on the iPolitix CD.

As the existence of such events and their propriety in relation to ethics laws were raised by Mayor Goodman, the Executive Director explored this concept and its nexus to Nevada ethics law. The Executive Director appreciates the enthusiasm of Mayor Goodman in, to quote city press releases, providing a "more informal and perhaps less imposing" setting for city residents to interact with Mayor Goodman (and perhaps at times other members of the city council), the Executive Director is not convinced the mere fact that Mayor Goodman does not personally profit from such events de facto evidence that a nexus to the ethics law does not exist.

In his interview with the Executive Director, Mayor Goodman stated such events were completely underwritten by the coffee shops, bars, and/or liquor companies which host the events. Coffee shops within the city of Las Vegas are subject to business licensing decisions that, if not dependent upon approval by the city council, may, at times appear before the city council if nothing more than as an appeal to actions by a city licensing entity. Further, bar establishments which, to quote Mayor Goodman, 'clamor' to host such an event, are even more likely to appear before the city council in relation to licensing issues to obtain or retain a liquor license. The city hosts many opportunities at government facilities free of charge to citizens which provide an opportunity to interact with Mayor Goodman and other members of the city council (see Tab P, which contains a November 8, 2002 media advisory release regarding Mayor Goodman's weekly news conference – many more such advisories exist; November 19, 2002 city press release regarding on-line meeting regarding downtown redevelopment – and which references monthly on-line meetings; and undated city press release regarding 'open door meetings' which are held at 10:00 a.m. on the third Friday of each month).

The Executive Director concludes that various city buildings and public events provide ample opportunities for citizens of Las Vegas to interact with Mayor Goodman and members of the city council on an informal basis and without sponsorship of private business entities which may be subject to licensing decisions before the city council, and thus within the sphere of influence and potential jurisdictional abuse of the city council. An argument can be made that the likelihood of such occurrences is de minimis. Therefore, the Executive Director provides this as additional information for the panel and does not make a recommendation in regard to any potential violation of ethics law.

The crux of this investigation can be summarized in a few words. Mayor Goodman believes no personal profits equate to no ethical violations. Mayor Goodman says his conduct is appropriate and ethical. The Executive Director respectfully disagrees.

Mayor Goodman's March 24, 2004 response to the Executive Director's request for additional information has been provided to the panel, except the sealed envelope mentioned by Mayor Goodman which remains sealed and has been in the custody of NCOE Chairman Rick Hsu since it was delivered to the Commission office on the morning of March 25, 2004. Though several items related to the iPolitix issue were provided with the response, the majority of Mayor Goodman's March 24 letter disputes the authority of the Executive Director to conduct and investigation and perform her job pursuant to statute and regulation.

However, of greater concern, the response appears designed to eviscerate the investigation process and undermine the personal credibility of the Executive Director as a diversionary tactic to the issue at hand - the potential and alleged ethical misconduct of the public officer in the performance of his duties.

Mayor Goodman's response also purports several items which are untrue. On page three, Mayor Goodman states "The next day, two of the City's attorneys – on their own initiative – discussed the confidentiality issues with you and the Commission counsel." In the best recollection of the Executive Director, the call was placed initially to the Commission Counsel due to Mayor Goodman's concerns, concerns which were reiterated in the conversation between the two city attorneys, Commission Counsel, and myself. I strongly believe the contact by the city attorneys was initiated at the request of Mayor Goodman.

Also on page three, the Executive Director has not, in the past week or at any time, submitted any request to be added to the mailing list for a ward newsletter of any member of the Las Vegas City Council.

Third, Mayor Goodman makes several inferences as to inappropriate collaboration or communication between a reporter and me. I presume this to be political columnist Jon Ralston based on the March 11 conversation with Brad Jerbic and John Redlein, and the subsequent March 16 personal interview with Mayor Goodman. On both occasions Mr. Ralston was specifically mentioned by the city attorneys and Mayor Goodman. I have no personal knowledge of the sources or resources of Mr. Ralston, except that the source is not me. The

sources of information utilized by the Executive Director in the course of the investigation are well documented within this report and its attachments.

I. CONCLUSION

The Executive Director hereby recommends that the panel find sufficient credible evidence exists to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether the subject of the complaint violated:

- The provisions of NRS 281.481(1) in one instance;
- The provisions of NRS 281.481(2) in two instances;
- The provisions of NRS 281.481(7) in two instances;
- The provisions of NRS 281.481(10) in one instance; and
- The provisions of NRS 281.553 in two instances.

Further, the Executive Director hereby recommends that the panel find no just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations that the subject violated NRS 281.501(2), NRS 281.501(3), or NRS 281.501(4), and further that these allegations be dismissed.

DATED: March 25, 2004

Stacy M. Jennings
STACY M. JENNINGS, MPA
EXECUTIVE DIRECTOR